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TORTS—STATUTE OF LIMITATIONS—TIME WHEN STATUTE
BEGINS TO RUN

In 1946 defendant manufactured a rifle which remained in the hands of a wholesaler and later a retailer until its sale to plaintiff's cousin in 1949. Plaintiff borrowed the rifle in 1950 and suffered the loss of an eye when the negligently manufactured weapon backfired. In plaintiff's suit begun within one year of the injury, the trial court gave a summary judgment for the defendant. On appeal, held: affirmed, one judge dissenting. The action was barred under Connecticut's one year statute of limitations.¹

In 1935 the Connecticut legislature changed its statute of limitations applicable to tort actions so that it read that the period was to run "from the date of the act or omission complained of"² rather than "from the date of the injury or neglect complained of," as it had previously read.³ From this language change the court in the principal case concluded that the legislature intended the statutory period to run from the date of the defendant's act or omission regardless of when the plaintiff was injured. The court held that the "act or omission complained of" was committed in 1946 when the defendant put the rifle on the market.

In a dissenting opinion Judge Frank, without denying the power of the legislature to lay down a different rule, felt that the majority's interpretation resulted in a method of computing the running of the statute so illogical that a court should not impute such an intention to a legislature in the absence of the most clear and convincing statutory language to that effect. From certain parts of the legislative history of the Connecticut statute in question, considered in connection with both the legislative history and language of other Connecticut statutes of limitations, he was unwilling to conclude that the Connecticut legislature intended that the statute of limitations could run against what was never a cause of action.⁴

Although the concept of statutes of limitations originated in

1. *Dincher v. Marlin Firearms Co.*, 198 F.2d 821 (2d Cir. 1952).

2. CONN. REV. GEN. STAT. § 8324 (1949): "No action to recover damages for injury to the person, . . . shall be brought but within one year from the date of the act or omission complained of. . . ."

3. CONN. REV. GEN. STAT. § 6015 (1930).

4. *Dincher v. Marlin Firearms Co.*, 198 F.2d 821, 823 (2d Cir. 1952).

Roman times, our present statutes stem from the common law attitude toward real property.⁵ Three different reasons have been advanced for the enactment and continuance of modern statutes of limitations: (1) The statutes tend to put an end to litigation and hence to foster peace and welfare in the community; (2) The statutes protect the defendant from stale claims and lift from him the burden of preserving evidence; (3) A plaintiff should not be allowed to let a claim lie dormant for a number of years and then activate it.⁶

The overwhelming majority of modern cases view the last as the most valid underlying reason for statutes of limitations.⁷ In most instances, the statutory language itself, either expressly or by reasonable implication, lends support to that conclusion.⁸ It is essential, then, under such statutes, that there be a cause of action which could be barred. It is not necessary, however, that the plaintiff know of the existence of the cause of action, nor even that reasonable diligence would disclose it to him, before the statute can begin to run.⁹ If, however, the defendant

5. ANGELL, LIMITATIONS OF ACTIONS 6, 7 (5th ed. 1869); WOOD, LIMITATIONS 9, 10, 11 (4th ed. 1916).

6. *Ibid.*

7. *Ibid.* See *M'Cluney v. Silliman*, 3 Pet. 270, 278 (U.S. 1830):

Of late years, the Courts in England, and in this country, have considered statutes of limitations more favorably than formerly. They rest upon sound policy, and tend to the peace and welfare of society. . . . By requiring those who complain of injuries to seek redress by action at law, within a reasonable time, a salutary vigilance is imposed, and an end is put to litigation.

With reference to such statutes, it is stated in WOOD, *op. cit. supra* note 5, at 10:

. . . [Y] et, as they are acts which take away existing rights, they should always be construed with reasonable strictness, and in favor of the rights sought to be defeated thereby, so far as is consistent with their letter and spirit. . . .

8. The statutory language of the great majority of states follows the idea that it is the plaintiff's existing cause of action that is barred. See 32 NEB. L. REV. 127 n. 21 (1952). For a typical example see MO. REV. STAT. § 516.100 (1949):

Civil actions, other than those for the recovery of real property, can only be commenced within the periods prescribed in the following sections, *after the causes of action shall have accrued*; . . . the cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, but when the damage resulting therefrom is sustained and is capable of ascertainment, and, if more than one item of damage, then the last item. . . . [Emphasis added.]

For a construction and application of this section see *Allison v. Missouri Power and Light Co.*, 59 S.W.2d 771 (Mo. 1933).

9. *Faulkner v. Huie*, 205 Ark. 332, 168 S.W.2d 839 (1943); *Schmiat v. Merchants Despatch Transp. Co.*, 270 N.Y. 287, 200 N.E. 824 (1936); *Hillel v. Motor Haulage Co.*, 102 N.Y.S.2d 578 (Sup. Ct. 1950); *DeLong v. Campbell*, 157 Ohio St. 22, 104 N.E.2d 177 (1952).

somehow conceals the cause of action from the plaintiff the running of the statute is prevented.¹⁰ In addition it is not necessary that all items of damage take place before the statute of limitations can begin to run; it is only necessary that some damage (enough to satisfy the requirements for stating a cause of action for tort) accrue.¹¹ Furthermore, it is not material that the plaintiff have knowledge or the means of obtaining knowledge of the existence of the damage in order to start the statute running.¹²

Only one case, other than the instant one, has been discovered in which a court has held that the statute of limitations has run in a tort action prior to the time when any cause of action accrued. In *Hopper v. Carr Lumber Co.*¹³ the Supreme Court of North Carolina conceded that logically there is no cause of action in tort until both act or omission and the resultant injury have occurred, but said that since a considerable period of time often separates the two, reason requires that the time of the running of the statute be computed from the time of the wrongful act or omission.¹⁴

10. *Fravel v. Pennsylvania R. Co.*, 104 F. Supp. 84 (D. Md. 1952); *Scarborough v. Atlantic Coast Line R. Co.*, 190 F.2d 935 (4th Cir. 1951); see *Turtzo v. Boyer*, 370 Pa. 526, 529, 530, 88 A.2d 884, 885, 886 (1952).

11. *Becker v. Porter*, 119 Kan. 626, 240 Pac. 584 (1925); *Easter v. Dundalk Holding Co.*, 86 A.2d 477 (Md. 1952); *Schmiat v. Merchants Despatch Transp. Co.*, 270 N.Y. 287, 200 N.E. 824 (1936); *DeLong v. Campbell*, 157 Ohio St. 22, 104 N.E.2d 177 (1952); *Albert v. Sherman*, 167 Tenn. 133, 67 S.W.2d 140 (1934).

In tort actions the courts have experienced difficulty in determining when a cause of action first accrued. The reason for such difficulty is that some acts are themselves invasions of individual rights and thus legal injury is then present. On the other hand, some acts are not such an invasion and there must occur some injury apart from the act before there is a cause of action. See *Fraser v. Atlanta Title & Trust Co.*, 66 Ga. App. 630, 631, 19 S.E.2d 38, 39 (1942), where the court made this distinction in deciding when the statute of limitations began to run.

12. *Faulkner v. Huie*, 205 Ark. 332, 168 S.W.2d 839 (1943); *Dowling v. Lester*, 74 Ga. App. 290, 39 S.E.2d 576 (1946); *Schmiat v. Merchants Despatch Transp. Co.*, 270 N.Y. 287, 200 N.E. 824 (1936); *DeLong v. Campbell*, 157 Ohio St. 22, 104 N.E.2d 177 (1952).

13. 215 N.C. 308, 1 S.E.2d 818 (1939).

14. Other courts have considered differently the problem arising from the situation where the statute of limitations involved sets the running from the accrual of the action and where the imprudent act or omission and the resulting injury are widely separated in point of time. On the ground that they injury is an integral part of the "act," they have decided that the statute did not run until the injury. *Kitchener v. Williams*, 171 Kan. 540, 236 P.2d 64 (1951); *White v. Schnobelen*, 91 N.H. 273, 18 A.2d 185 (1941); *Fredericks v. Town of Dover*, 125 N.J.L. 288, 15 A.2d 784 (Ct. Err. and App. 1940); *Senauk v. Bronx Gas & Electric Co.*, 157 Misc. 948, 284 N.Y.S. 710 (N.Y. Munic. Ct. 1936); *Theurer v. Condon*, 34 Wash.2d

A comparison of the number of authorities on either side of the question, coupled with a consideration of the generally accepted theory behind statutes of limitations, indicates the desirability of the result reached by Judge Frank. His interpretation of the legislative history of the statute, however, remains unconvincing. Once the power of the legislature is granted, as it must be, it is reasonably clear that the Connecticut legislature used language which can bear only one interpretation in the light of the history of the statute. If criticism is to be leveled, it should be directed, not at the court, but at the legislature.¹⁵

448, 209 P.2d 311 (1949); *accord*, *Easter v. Dundalk Holding Co.*, 86 A.2d 477 (Md. 1952); *Pollock v. Pittsburgh, B. & L.E.R. Co.*, 27 Pa. 467, 119 Atl. 547 (1923).

15. In *DeLong v. Campbell*, 157 Ohio St. 22, 104 N.E.2d 177 (1952), the court was told that a great injustice would result from an early running of the statute of limitation. To the forceful argument of plaintiff's counsel the court said:

There is much persuasive force in this argument and claim, so far as justice is concerned, but the legislative branch of the government has determined the policy of the state and fixed the time when the statute of limitations shall bar an action for malpractice, and the argument addressed to us as to the time when the statute should begin to run properly should be made to the General Assembly. Our sole function is to interpret and enforce the legislative enactment and it is not our function, as we have said so many times, to disregard by legislating, a legislative enactment.

Id. at 27, 104 N.E.2d at 179.